1949. **File No.** D.S. Police /49

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Delhi Special Police Establishment Act 1946 and Government of India Act 1935

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Delhi Spl.

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C O N T E N T S.

Legal Department File No.I O.Delhi Special Police /49.

Sr. No.	R.I. / O. No.	Subject.	Pages.
		Opinions under the Delhi Special Police Establishment Act, 1946 and Govt. of India Act, 1935.	
1.	O.No.8900. 6.8.49.	Entry 39 in List I Consent to the functioning of special Police Force in the Province.	

V.M.D./8-8
49.

Office of the R.L.A.

Consent to the functioning of Special Police force in the Province.

Delhi Special Police Establishment Act, 1946 and Government of India Act, 1935.
Entry 39 in List I.

Entry 39 in the Federal Legislative List reads as follows:-

> "Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area in another Province, but not so as to enable the Police of one Province to exercise powers and jurisdiction in another Province without the consent of the Government of that Province."

The consent contemplated by the entry is not consent as a pre-requisite of enacting the law. The consent is a limitation contained in the entry itself, and that is why under section 6 of Act XXV of 1946 , the Central Government have been careful to enact that nothing contained in that law shall be deemed to enable any member of the Delhi Special Force Establishment to exercise powers and jurisdiction in any area in the Provinces etc. without the consent of the Government of the Province. With reference to this section the consent can only be given after the law was enacted. The consent given by the Government of Bombay was, as is recognized in the letter of the Government of India, consent given under the Ordinance; and with the expiry of the Ordinance that consent lapsed, although the consent may have been for an indefinite period; for the consent given under the Ordinance has not also been expressly saved and continued. The proper course to adopt was to secure from the Provincial Government consent after the Act was enacted with special reference to section 6 thereof. That has not been done, and the Government of India now realise the doubtful position and desire that we should re-affirm the consent already given. In my opinion the course now suggested by the Government of India would not really be of much avail

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"Consent" must ordinarily be given before the act agreed upon is done. Consent given ex post facto means only ratification. It is, therefore, difficult to give consent retrospectively, and it is doubtful whether that would validate the operational acts of the police force in this Province so far. However, there is now no alternative left, and the Government of Bombay may, therefore, write a letter to the Government of India to the effect that with reference to section 6 of the Act, it re-affirms the consent given for an indefinite period under their letter No. 5042/4-D, dated the 6th November 1946.

Sd/- P.M.Lad.
5-8.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 8900 , dated the 6th August 1949.

V.M.D./-8-8
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